

Advisory Opinion

IECDB AO 2009-07

April 30, 2009

TO ALL INTERESTED PERSONS:

Pursuant to Iowa Code section 68B.32A(12) and rule 351—1.2, the Iowa Ethics and Campaign Disclosure Board issues this opinion on post state employment restrictions in Iowa Code section 68B.7. We note at the outset that the Board's jurisdiction is limited to the application of Iowa Code chapters 68A and 68B, Iowa Code section 8.7, and rules in Iowa Administrative Code chapter 351. Advice in a Board opinion, if followed, constitutes a defense to a subsequent complaint based on the same facts and circumstances.

OPINION:

The Board first notes that its jurisdiction in interpreting the provisions of Iowa Code chapter 68B applies to the executive branch of state government and political subdivisions. As such, this opinion does not apply to the legislative or judicial branches.

Iowa Code section 68B.7 limits the ability of state officials and state employees from accepting employment for two years after leaving state government. Due to the wording of the statute as well as the number of words per sentence, it was difficult to interpret and enforce. The primary source of confusion was whether or not a state official or state employee was completely prohibited from appearing before the official's or employee's former agency for two years. Similar confusion existed as to whether or not a member of a commission or board of a "regulatory agency" could be hired within two years by the regulatory agency.¹

A number of Board advisory opinions attempted to alleviate this confusion. In addition, a contested case proceeding was initiated in response to a complaint that assisted in giving direction as to how the statute should be interpreted.² The statute was also amended by adding new Iowa Code section 68B.7(3) that was limited solely to the Workers' Compensation Commissioner and deputies of the Workers' Compensation Division of the Iowa Department of Workforce Development.

Due to the importance of having clear guidance in this area as state officials and state employees contemplate leaving state service and look for private sector employment, the Board proposed amendments to the statute during the 2009 General Assembly. Those amendments were passed by the General Assembly and signed into law by the Governor effective July 1, 2009.³

Iowa Code sections 68B.7(1) and (2), were amended by 2009 Iowa Acts, Senate File 52, section 3 as follows:

“1. A person who has served as an official, state employee of a state agency, member of the general assembly, or legislative employee shall not within a period of two years after the termination of such service or employment ~~appear before the agency or~~ receive compensation for any services rendered on behalf of any person, firm, corporation, or association in relation to any case, proceeding, or application with respect to which the person was directly concerned and personally participated during the period of service or employment.

2. A person who has served as the head of or on a commission or board of a regulatory agency or as a deputy thereof, shall not, within a period of two years after the termination of such service ~~accept~~ do any of the following:

a. Accept employment with that commission, board, or agency ~~or receive.~~

b. Receive compensation for any services rendered on behalf of any person, firm, corporation, or association in any case, proceedings, or application before the department with which the person so served wherein the person's compensation is to be dependent or contingent upon any action by such agency with respect to any license, contract, certificate, ruling, decision, opinion, rate schedule, franchise, or other benefit, or in promoting or opposing, directly or indirectly, the passage of bills or resolutions before either house of the general assembly.

The statutory amendments make it clear that a state official or state employee is permitted to appear before the official's or employee's former agency. However, the state official or state employee could not accept employment for two years when the employment would involve receiving compensation for work to be done “in relation to any case, proceeding, or application” the state official or state employee was “directly concerned and personally participated” during state employment.

The statutory amendments also make it clear that a member of a “commission or board of a regulatory agency” shall not for two years after leaving that commission or board:

- A. Accept employment with that commission, board, or regulatory agency.
- B. Receive compensation in relation to any case, proceeding, or application when the compensation is dependent upon specified actions by the commission, board, or agency.

We also remind state officials and state employees that are considering leaving state service to accept private sector employment that Iowa Code section 68B.5A places limits on the ability to accept employment as a “lobbyist” for two years after leaving state government.⁴

In closing, the Board encourages all state officials and state employees who are considering accepting private sector employment to contact the Board for guidance before doing so if the employment has the potential of involving lobbying activities or triggering the prohibitions in Iowa Code section 68B.7.

BY DIRECTION AND VOTE OF THE BOARD

James Albert, Board Chair
Janet Carl, Vice Chair
Gerald Sullivan
Betsy Roe
John Walsh
Patricia Harper

Submitted by: W. Charles Smithson, Board Legal Counsel

¹ See Iowa Code section 68B.2(23) for a list of state agencies that are defined as “regulatory agencies.”

² See Case No. 2001 IECDB 12/DIA 01IECDB001.

³ See 2009 Iowa Acts, Senate File 52, section 3.

⁴ See Board rule 351—8.17 and IECDB Advisory Opinions 2005-03, 2005-20, 2006-16, 2008-01, and 2008-11 for more guidance.